(4) *Mohamed Yatin v. Public Prosecutor* (1950) M.L.J. 57; 1 M.L.R. 7.

CRIMINAL REFERENCE.

E. Brown (Federal Counsel) for the appellant.

R. Ramani for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Spenser Wilkinson J.: — This was a reference under section 34 of the Courts Ordinance, 1948 of an appeal heard by the High Court on the 1st of November 1954 against the conviction of the present respondent by the Sessions Court on the 18th of May 1954 upon a charge under section 411 of the Penal Code. The point of law involved in the appeal which it was sought to have determined by the Court of Appeal was certified by the Public Prosecutor as follows:—

"Whether or not Mr. Justice Bellamy was correct in stating the law to be as follows:— 'if he (the accused) gives an explanation which in the opinion of the jury may possibly be true although they do not necessarily believe it then the Crown cannot rely upon the presumption and it must prove the guilt of the accused just as in any other criminal case'."

This Court is unanimously of opinion that this passage from the judgment of the learned High Court Judge was not a correct statement of the law. Substantially the same question was referred to the Court of Appeal in 1951 in the case of *Wang Kia Heng v. Public Prosecutor*[1], although in that case it was section 34(1) of the Minor Offences Ordinance which was in question. The Court of Appeal in that case laid down as follows:—

"In our opinion, the proper test to be applied in cases of this kind is that laid down by Lord Goddard C.J. in R. v. Aves[2], when he said:— 'Where the only evidence is that an accused person is in possession of property recently stolen, a jury may infer guilty knowledge (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue. If, however, the explanation offered is one which leaves the jury in doubt whether he knew the property was stolen, they should be told that the case has not been proved, and, therefore, the verdict should be Not Guilty'."

The case of *Rex v. Aves*[2] was a case of receiving; so also was the case of *Rex v. Garth*[3] which preceded it and laid down the same principle. *Rex v. Garth*[3] was in turn referred to in the local case of *Mohamed Yatin v. Public Prosecutor*[4]. In our view, the principles laid down in *Rex v. Aves*[2] are clearly applicable to cases under section 411 of the Penal Code, and the law on this subject is not in doubt although its application may in some cases cause difficulty.

In the present case a majority of the Court was of the opinion that in view of the time which had elapsed since the respondent's conviction, it would not be right in any event to interfere with the order of the High Court setting that conviction aside. No arguments were, therefore, heard upon the merits of the case and no order by this Court will be necessary.

We content ourselves with answering the question asked by the Public Prosecutor by saying that the learned Judge's statement of the law was not correct, and with reiterating that the decision in the case of *Wang Kia Heng v. Public Prosecutor*[1] applies to cases of receiving and is binding upon all Courts in the Federation.

Solicitors for the respondent: *Braddell & Ramani.*

Re ABDUL GHANI

[A. Cr. J. (Buhagiar J.) May 31, 1955]

[K. L. — Criminal Revision No. 11 of 1955]

Immigration Ordinance, 1952, ss. 55(1)(k) and 56 — Entry permit — Passport produced in support of application for — False statement — Whether entry permit issued on strength of passport or on declaration by local sponsor.

The accused was charged with obtaining for one Jaibul Nisa an entry permit by making a false statement, namely that, the said Jaibul Nisa was his wife, and thereby committed an offence under s. 55(1)(k) and punishable under s. 56 of the Immigration Ordinance 1952. Evidence was adduced by the prosecution that at the time he made the declaration as a local sponsor in support of the application for Jaibul Nisa for the grant of a permit to enter and reside in Malaya, Abdul Ghani was not married to her. In support of the application Abdul Ghani produced to the Asst. Controller of Immigration Jaibul Nisa's Indian passport in which she was described as the wife of Abdul Ghani. Eventually the Immigration Authorities issued a permit for her.

At the conclusion of the prosecution case the learned Magistrate found that there was no *prima facie* case made and acquitted and discharged the accused on the ground that the Immigration Authorities issued the entry permit on the strength of the Indian passport.

Held: the entry permit was issued as a result of the declaration which was supported by the passport. The passport was only a corroboration of what was stated in the application. As the declaration was false, an offence under s. 55 of the Immigration Ordinance 1952 has been committed. The case, therefore, be remitted to the learned Magistrate for further proceedings.

CRIMINAL REVISION.

M. Edgar for the accused.

E. Brown (Federal Counsel) for the prosecution.

Buhagiar J.: — Abdul Ghani son of Jallula was charged in the Magistrates' Court as follows:—

"That you on or about the 9th March, 1954, at Immigration Office, Kuala Lumpur, did obtain for one Jaibul Nisa an entry permit No. 000705 (Ref. B/3609/C911) by making a false statement, namely that, the said Jaibul Nisa was your wife, and thereby committed an offence contrary to paragraph (k) of sub-section (1) of s. 55 of the Immigration Ordinance 1952 and punishable under s. 56 of the said Ordinance."

The prosecution adduced evidence which showed that Abdul Ghani was not married to Jaibul Nisa at the time he made the declaration as a local sponsor in support of the application of Jaibul Nisa for the grant of a permit to enter and reside in Malaya. Abdul Ghani and Jaibul Nisa were betrothed to each other before the latter came to Malaya but when she arrived in Penang she and Abdul Ghani went through a ceremony of marriage.

In support of the application Abdul Ghani produced to the Assistant Controller of Immigration Jaibul Nisa's Indian passport in which she was described as the wife of Abdul Ghani. On the strength of this passport the Immigration Officer was satisfied that Abdul Ghani and Jaibul Nisa were husband and wife and a permit was eventually issued by the Immigration Authorities.

At the conclusion of the case for the prosecution the learned Magistrate found that there was no *prima facie* case made and acquitted and discharged the accused. The ground for such finding was that the Immigration Authorities issued the entry permit on the strength of the Indian passport. This is obviously wrong. The entry permit was issued as a result of the declaration which was supported by the passport; a passport is usually a document on which one can rely as to the status of a person and quite naturally therefore the passport in question was considered by the Immigration Officer a sound corroboration of what was stated in the application. All the same, however, the permit was issued solely on the strength of what was stated in the application and declaration by Abdul Ghani, and if that declaration is false an offence under section 55 of the Immigration Ordinance, 1952 has been committed.

For the above reasons I set aside the order of the learned Magistrate acquitting and discharging Abdul Ghani and ordered that the case be remitted to the learned Magistrate for further proceedings.

At the hearing of this revision, the learned Public Prosecutor also informed me that although there is no mention of this in the record the learned Magistrate refused to accept as an exhibit the Surat Nikah which the prosecuting officer tendered at the trial.

I directed, therefore, that before Abdul Ghani is called upon to enter his defence, the prosecution may adduce such further evidence as they may consider necessary.

Appeal allowed.

Solicitors for the accused: *Bannon & Bailey.*

TAN CHWEE LEONG v. REGINA

[C. Cr. A. (Murray-Aynsley C.J., Taylor and Knight JJ.) June 25, 1955]

[Singapore — Criminal Appeal No. 37 of 1954]

Penal Code, ss. 392 and 397 — Armed robbery — Accomplice — Whether sufficient evidence upon which Jury might reasonably find prosecution witness to be accomplice — Matter not put to the Jury in course of Summing-up.

The appellant in this case was convicted of armed robbery in the following circumstances. The driver of a car on March 12, 1953 took some people to a spot in Dunearn Road. He waited there for some time during which he heard a noisy incident. The men returned hurriedly to the car, one of them injured and bleeding. He then drove the party back to town. Later the same evening he made a statement to the police.

The appellant was arrested on August 6, 1954. At the trial it was proved that the incident was a robbery in the course of which one robber was hurt. The evidence against the appellant consisted of identification by the car driver and of a confession which was afterwards retracted. The conviction was attacked on the ground that the car driver was an accomplice.

Held: if there is evidence upon which the jury might reasonably find that a witness for the prosecution was an accomplice the question must be put to the jury for their consideration and the usual warning given, even though there is other and untainted evidence on which the jury might convict. In this case, there was evidence on which the jury might have considered the witness an accomplice, therefore the appeal must be allowed.

Case referred to:—

(1) *Davies v. Director of Public Prosecutions* (1954) A.C. 378; (1954) 1 All E.R. 507.

COURT OF CRIMINAL APPEAL.

G. Abisheganaden for the appellant.

T. A. Mahoney (Crown Counsel) for the respondent.

Murray-Aynsley C.J. (delivering the judgment of the Court) : — In this case the Court decided to allow the appeal and we intimated that we would give reasons later. They are as follows.

The appellant was convicted of robbery in the following circumstances. The driver of a car on 12th March 1953 took some people to a spot in Dunearn Road. He waited there for some time during which he heard a noisy incident. The men returned hurriedly to the car, one of them injured and bleeding. He then drove the party back to town. Later the same evening he made a statement to the police.

The appellant was arrested on August 6th, 1954. At the trial it was proved that the incident was a robbery in the course of which one robber was hurt. The evidence against the appellant consisted of identification by the car driver referred to and of a confession which was afterwards retracted.